

**Ad Hoc Committee on Protecting Personal Information in Court Files**  
**Minutes from Meeting of May 29, 2009**

**Present:** Justice Jim Jones, Chair; Judge Jeff Brudie, Judge Rich Bevan, Johnathan Medema, Dawn Peck, Keely Duke, Jason Pintler, Lori Fleming, Kristina Glascock, Rob Anderson, Todd Hurt, Bill Hurst, John Peay, Janica Bisharat, Michael Henderson, Michael Bartlett and Cathy Derden.

Justice Jones welcomed the Committee members and gave a short explanation of what concerns were prompting the need for rules. When it comes to public records maintained in electronic form, I.C.A.R. 32 restricts public access to certain identifying information and ISTARS is able to restrict that access in accord with the rule. However, there is nothing to prevent anyone from looking at the actual paper file and finding personal identifying information. The Committee had before it the federal rules as well as rules from several other states as examples and began by addressing essential questions on what information should be protected and how it should be protected.

What information should be protected? After discussion the Committee reached a consensus that social security numbers, financial account numbers, birthdates, addresses, and names of minor children should be information that is not available to the general public, and recommended following the federal rules, except as to social security numbers. The federal rules dictate that only the last four digits of the SSN be used. However, I.C.A.R. 32 allows public access in electronic records to only the last three digits, so the committee recommended the same limitation apply to paper filings. Financial accounts should be limited to the last four digits, birthdates to the year only, and addresses to only the city and state. Minors should be referred to by initials. Driver's license numbers were discussed but the consensus was that this information needed to be on uniform citations. The rule should require that the above information be limited on court filings or partially redacted. While the rule would not apply to discovery, since it applies to any court filing it would apply to any discovery or exhibits filed with the court and require redaction of those documents at that point.

Whose responsibility is it? There was unanimous agreement the burden should be on the party filing the document to redact or limit personal identifiers and that the clerk would not be responsible for reviewing filings. Failure to follow court rules should be grounds for sanctions in civil cases under I.R.C.P. 37.

What exceptions are necessary? The Committee reviewed the exceptions set out in the federal rules but found only one exception necessary in civil cases. This is the exception for the record of a court, tribunal, administrative or agency proceedings if that record was not subject to a redaction requirement when originally filed.

Criminal cases are more difficult because there is paperwork in the file that is created by law enforcement and much identifying information is needed not only by the prosecutor and the court but also by all of the agencies who deal with defendants. The Committee

determined that exceptions should be made for an arrest or search warrant, uniform citations, a charging document and an affidavit filed in support of a charging document.

However, while these exceptions were deemed necessary in the file, there was agreement that the personal information on these documents should not be accessible to the public and that a method needed to be devised to separate such information. It was noted that currently the Fourth District has an administrative order that requires all criminal judgments to have the defendant's date of birth and social security number in the caption on the judgment. The Committee discussed a criminal information sheet that could be used by prosecutors and law enforcement to separate personal information. One suggestion was that identifying information could be entered into ISTARS and then the sheet could be shredded or marked confidential with access only by the parties or court personnel. While this might be workable for a criminal information or indictment there were questions as to its practical use when it came to warrants. It was noted that documents admitted at trial that contain personal identifying information about the defendant could be filed as confidential exhibits.

According to John Peay and Julie Cottrell, ISTARS shares data with many agencies including Idaho Transportation Department, Bureau of Criminal Investigations, Fish and Game, Port of Entry, Department of Juvenile Corrections, and soon the Department of Corrections, for the most part daily through direct data downloads from ISTARS to their systems. ISTARS also shares data with local Law Enforcement via the access to the repository for things like warrants, no contact orders and mental commitment cases. Therefore, most agencies get their information directly from ISTARS and not from a paper document and have access to the personal information that is blocked from the public.

The Committee recommended that a different ad hoc subcommittee be formed to develop a criminal information sheet. This separate committee should be made up of representatives from law enforcement, prosecutors and defense counsel and a workable solution sought.

How is the personal information filed if needed? Personal identifiers are not necessary in all cases. When necessary, the Committee recommended following F.R.C.P. 5.5, which provides for the option of filing a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed that may be filed with the redacted document.

Should the redaction requirement apply to transcripts? The consensus was the requirement should not apply to a transcript unless the transcript was filed as an exhibit. Counsel should be encouraged to use discretion during courtroom proceedings when referencing certain personal information to avoid having it unnecessarily in the official court transcript.

Additional Recommendations: The Committee recommended having the civil and criminal rules committees look at new rules on discovery to address privacy issues. In

many depositions the social security number is routinely asked when not really needed and in criminal discovery the names and addresses of victims and witnesses, while needed for defense counsel to contact, may need to be kept otherwise private.

A draft of the proposed rules from this meeting will be circulated to the members for further input.

**Proposed Civil Procedure Rule \_\_\_\_ . Privacy Protection For Filings Made with the Court**

(a) Redacted Filings. Unless the court orders otherwise, the parties shall refrain from including or shall partially redact, where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits.

(1) Social Security numbers. If an individual's social security number must be included in a pleading, only the last three digits of that number shall be used.

(2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child shall be used.

(3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year shall be used.

(4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers shall be used.

(5) Home addresses. Only the city and state shall be identified.

(b) Exceptions. The redaction requirement does not apply to the record of a court, tribunal, administrative or agency proceeding if that record was not subject to the redaction requirement when originally filed.

(c) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(d) Responsibility for compliance. The parties and counsel are solely responsible for redacting personal data identifiers. The clerk will not review each document for compliance with the rule. Failure to comply with this rule is grounds for sanctions pursuant to Rule 37.

**Idaho Rule of Criminal Procedure \_\_\_\_ . Privacy Protection For Filings Made with the Court**

(a) Redacted Filings. Unless the court orders otherwise, the parties shall refrain from including or shall partially redact, where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits.

(1) Social Security numbers. If an individual's social security number must be included in a pleading, only the last three digits of that number shall be used.

(2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child shall be used.

(3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year shall be used.

(4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers shall be used.

(5) Home addresses. Only the city and state shall be identified.

(b) Exceptions. The redaction requirement does not apply to the following:

(1) the record of a court, tribunal, administrative or agency proceeding if that record was not subject to the redaction requirement when originally filed;

(2) an arrest or search warrant;

(3) a charging document and an affidavit filed in support of any charging document; and

(4) Uniform citations.

(c) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(d) Responsibility for compliance. The parties and counsel are solely responsible for redacting personal data identifiers. The clerk will not review each document for compliance with the rule

